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OVERPRODUCTION OF LAW.

During a short address, which I had the honor to deliver at the Commencement Luncheon of Columbia, in June, 1904, I referred briefly to the growing tendency in this country to multiply the written law and, as a necessary corollary, the unwritten law as well. It was suggested that this ever-increasing volume of crude and undigested enactments was injurious to commerce and needlessly vexatious and burdensome to every professional and business man.

The approval which these views received from the press and from gentlemen of wide experience in the commercial world led me to think that the time was opportune for an agitation which might result in checking an evil which is a menace to our prosperity and a serious obstacle in the path of pure and efficient government.

A short time ago a letter was published from a statesman who has had unusual opportunities for observation, having served his State with distinction both in a legislative and executive capacity. He says—I quote from memory—“Congress has adjourned and the country is safe. When the Legislature adjourns the State will be safe.” This was probably written in a jocular vein but I have no doubt that it expresses the views of practically the entire business community.

A prominent manufacturer once said to me that if he were assured that during a period of five years no law would be passed injuriously affecting his business, he could double its volume.

While the law mills are in operation no man who has money invested in a business venture feels secure. He may awake any morning to find that a bill has been introduced which, if passed, will turn his capital to ashes. He feels that he is sleeping over a mine of legislative dynamite, which ignorance, stupidity or malice may explode and destroy the patient toil of years. The multiplication of unnecessary and frequently vicious laws not only unsettles trade, but it breeds corruption and

extravagance and encourages a disregard for authority. Few men trouble themselves to obey a statute which may be declared unconstitutional by the courts or repealed or amended within the year. The foundation of civilization is respect for law. To be respected a law must be understood, and to be understood it must be plain, simple, immutable. The certainty that the law will be faithfully executed and violators punished makes its enforcement easy and infractions infrequent. An imperfect law which is understood and respected is better than a theoretically perfect law which is neither respected nor enforced. The one produces a law-abiding community, the other a lawless one.

The legal maxim *Ignorantia juris non excusat* is no longer applicable to our kaleidoscopic and perplexing system. To the American buried under an avalanche of statute books it is but an antique and curious fiction.

Everyone does not know the law. Should we assert that no one knows it we would not be far afield. No human memory can retain even the titles of the new laws, let alone the subject-matter.

During the last two years the Legislature of New York passed 1,520 laws, or 760 at each session. Pennsylvania passed 504 at the last session, and so on through the list of States. The 57th and 58th Congresses passed 6,700 laws. It is true that a majority of these were private laws granting pensions to those who, under general laws, would not be entitled to receive them. It would be a conservative estimate to assert that Congress and the Legislatures of 45 States turn out an annual gist of 14,000 laws. Add to this the fact that the appellate tribunals alone, State and Federal, are uttering about 20,000 decisions annually, a large proportion being devoted to an interpretation of *leges scriptæ*, and it would seem that the American people are either exceptionally unruly or that the maxim "the best government is that which governs least" has been wantonly ignored by our rulers.

Comparatively few people appreciate the extent to which this statute tinkering has gone, and those who do hardly realize its consequences. A foreigner disposed to see the ludicrous side might draw some startling and not altogether

flattering deductions from the fact that it requires 14,000 laws annually to keep the American people in order.

The entire system is based upon the fallacy that a fabric of law can be framed so minute and circumstantial as to cover every conceivable contingency which has arisen in the past or may arise in the future. This is something which never has been and never can be accomplished. No finite mind is equal to the task. Instead of providing a comprehensive enactment sufficiently elastic to cover specific acts of omission and commission, the aim is to anticipate these acts by a multitude of special regulations which the clever law breaker finds it easy to evade.

Each year there is a new batch of amendments to the Codes of Civil and Criminal Procedure and to the Penal Code. These amendments are passed to cover some novel and ingenious variety of crime which has occurred during the preceding year, or to enable the public prosecutor to convict in a pending prosecution, or to assist a litigation which could hardly hope for success without such aid. Instances are not infrequent where persons of influence secure amendments to the codes making testimony competent which otherwise would be unavailable. More than one lawsuit has been won by resort to such methods; methods always questionable and often pernicious. The citizen should feel secure when he regulates his conduct by existing law; he cannot regulate it by what the law may be.

The last session laws of New York will serve as an illustration. There are 35 amendments to the Code of Civil Procedure, 8 to the Code of Criminal Procedure, 40 to the Penal Code and 32 to the game law. There is the usual quantity of private and special legislation. There are 46 laws legalizing town, county and village bonds and the acts of notaries public and commissioners of deeds. There are 233 amendments to local laws, principally charters of cities, and 123 provisions of local laws are repealed.

The same disposition to alter and amplify is observable in the general laws relating to banking, corporations, insurance, agriculture, excise, juries, insanity, charities, elections, labor, taxes and navigation. In almost every department where government touches the well-being, property rights and industries of the people there is tinkering, change,

confusion. There is, perhaps, some consolation in the reflection that conditions might have been worse, for 1,840 bills introduced at the last session failed to pass.

Compare this record with that of Great Britain. Parliament, legislating for 42,000,000 people, passed on an average—taken from the figures for the six years prior to 1905—46 general laws and 246 local laws annually. While the United Kingdom is adding a thin pamphlet to her statute book, New York is adding two massive volumes, which, with the contributions from the other states, constitutes a library of at least 46 volumes. While the affairs of the British public are well regulated by 292 yearly enactments it requires 14,000 to regulate our own.

If Great Britain sought to emulate our example there should be each year, allowing for a population only half as large, 7,000 laws instead of 292. Should we emulate her example, even though we doubled the number of her laws because of our larger population, we should have to be content with 584 laws annually.

New York, on the same basis of comparison, would be compelled to struggle on with a beggarly total of 50 laws per annum.

What is there in the character and aspirations of the two peoples which makes it necessary that we should enact 47 laws each year where they enact but one?

Our complex system of government may, of course, account for a part of our amazing fecundity in law making, as compared with every other civilized country on the globe, not for all. Candor must compel the admission that there is something radically wrong with a system which produces such lamentable results. It has gone on without a protest because public opinion has not been sufficiently directed to the subject. A spirit of paternalism has been encouraged which looks to the Legislature as the panacea for all our ills. We have yet to learn that there are some inconveniences, annoyances and even faults which cannot be remedied by law.

The attempt to teach altruism by statute has seldom been successful. The Legislature is not properly constituted to enforce the precepts of the decalogue. Law does not make an enlightened national conscience, but an enlightened

national conscience should make the law. We have reached that curious stage of aberration when a legislative session is commended if it has added a large number of laws to the statute book and criticised if it has not done so. Political leaders "point with pride" to the records made by their party in this particular.

Every one of the 150 Assemblymen and 50 Senators goes to Albany imbued with the notion that his success as a statesman depends upon the number of bills he succeeds in putting through. Every one of his constituents who has a grievance to redress or a "reform" to inculcate embodies his ideas in the form of a bill and intrusts the result to "his member." Unless the bill be introduced and "pushed" the embryo statesman is assured that the result may be disastrous to his fortunes in the following November. In this way bills are frequently passed to meet some special contingency only to find that they are applicable to conditions never dreamed of when the bill was thoughtlessly rushed through.

The grafter, who is quietly at work devising new schemes to raid the treasury, and the fanatic, who is ever inventing new schemes to punish the sinfulness of sin, are almost equally pernicious in adding to the total of wicked and worthless laws.

There can no longer be a doubt that much of this legislation, and proposed legislation, is not only dishonest but intentionally so. No one, whose birth antedates yesterday, doubts the existence of "strike bills."

At the insurance investigation the president of one of the leading companies testified as follows:

"With the beginning of every year, I dare say, it is the feeling of every executive officer—I know it is of myself—that for the ensuing five or six months of the year we shall be badgered and harassed to death in every State in the Union by the introduction of bad bills of every kind. Sometimes men of honor will feel they have a right to amend a law, and their motives are all right, but mainly the general insurance legislation of this country emanates from people who are desirous of striking at insurance companies.

"I believe that three-fourths of the insurance bills introduced in the United States are blackmailing bills. The

managements of the companies really tremble in the beginning of the year as to what they have to encounter during the following six months of the year."

The present is not the time, perhaps, when a plea for the insurance companies will be listened to with toleration, and yet when a high official deliberately states, under the solemnity of an oath, that the men upon whom the policyholders should rely for protection are levying blackmail systematically, one cannot but feel some sympathy for the men who, in protecting the property in their custody from the assaults of highwaymen, use the weapons of highwaymen in return. A man attacked by footpads is not required to exercise extraordinary discernment in the choice of a club with which to crack the skulls of his assailants. I am not one of those who believe that a citizen of fair name and reputation who has theretofore led a blameless life becomes dishonest the moment he enters a legislative career. I have, however, known some instances where the atmosphere of the capitol seemed to weaken somewhat the power to resist the tempter. "Strike" legislation is largely attributable to the system which we have been considering, and it is a disgrace to any government which tolerates it. It will be stopped only when the flood gates of legislation are closed.

One of the excuses for the ceaseless tampering with our tax laws is that it is necessary in order to raise more revenue for the increasing expenses of the State. That they have increased is unfortunately too true. From \$9,878,214 in 1881 they have grown to \$26,467,678 in 1904. This enormous increase is due in part to extravagance produced by bad legislation, and in part to bad legislation produced by extravagance. Sinecures have been created, expenses increased, new boards established and old ones enlarged, and it has been openly asserted, and not denied, that places have been made solely for the purpose of rewarding political favorites. Although both parties have made solemn pre-election promises to inaugurate a policy of retrenchment and economy, these promises become atrophied soon after the votes are counted. Economy has few friends among the law-makers. Extravagance can always rely upon a majority.

And so each year new schemes of taxation are devised to meet the ever-increasing expenses. Broad principles of political economy are cast aside, and any plan, however transitory, is adopted which will tide over the existing exigency. No business that is flourishing is safe. If any one doubts that the state governments are extravagantly conducted, let him examine critically the appropriation acts, and he will be no longer skeptical. Many a promising scheme to deplete the treasury would never materialize if it were understood that "retrenchment" was to be sincerely and aggressively the policy of the State administrations.

Under the conditions which now prevail no subject is too sacred or too trivial to escape the bungling hand of the legislative tinker. At one time the Legislature may be wrestling with some stupendous change in the tax laws; at another it may be wholly engrossed in "an act to remove swill and ashes from village buildings." A private enterprise managed upon the principles which obtain in two-thirds of the states would not long survive the uncertainty, the confusion and the reckless squandering of resources.

Can any man doubt that this overproduction of law creates a feeling of insecurity in business circles, engenders corruption, offers numberless opportunities for dishonesty to levy tribute on wealth and is, in short, a menace alike to morality and patriotism?

Conceding the malady, what is the remedy?

The State Constitution, Art. III, Section 18, provides that "The Legislature shall not pass a private or local bill in any of the following cases," and then follow 14 subjects on which legislation is prohibited. In all other respects the field is open and, as we have seen, the power has been freely exercised in legislating concerning most trivial and inconsequential matters. The prohibition of the Constitution might, by amendment, be extended still further, or the Legislature, under the authority already possessed by it, could grant limited relief by general laws delegating to the courts the right to act, upon sufficient facts appearing.

Again, biennial or triennial sessions would afford some relief. It is said that biennial sessions do not stop the flow of legislation, but postpone it only. Grant it! and yet it

would be a distinct advance if every other year at least the business community were entirely relieved from anxiety. Moreover, biennial sessions mean longer terms, fewer elections and better men.

A governor, thoroughly in earnest to prevent all but necessary legislation, could do much by his influence and a free use of the veto power to confine legislation within legitimate limits. But his power to strike at wrong is so hampered by the short tenure of his office that small relief can be expected from this source. It is unfair to expect an executive who has but two years to serve to undertake a reform the wisdom of which cannot be demonstrated in less than four years. Governors and mayors would doubtless undertake many measures for the public welfare were they permitted to remain in office long enough to prove the wisdom of these measures.

The remedies thus far suggested, even if all were in operation, would be but tentative and temporary. The real remedy lies much deeper and can only be found in an aroused and enlightened public opinion. When once the people begin to think on this subject, when they appreciate how intolerable the present system is becoming, they will find the remedy and insist upon its being enforced. They will elect only men of high character and education to represent them and will keep them in office so long as they represent them honestly and faithfully. They will insist that the laws be drafted, not by mere tyros, but by skilled experts; that no special legislation be tolerated; that few acts shall be passed making radical changes in the municipal law, and that no measure which has worked well in the past shall be amended unless the amendment be demanded by clearly expressed public opinion. The people must insist that the watch-words for every legislative session be Honesty, Frugality, Simplicity. We can, if we will, demand and secure a government, economical without being penurious, progressive without being empirical, and enlightened without being visionary.

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